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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No 484.

THE UNITED STATES, APPELLANT,

vs.

VAN B. GUNNISON.

APPEAL FROM THE COURT OF CLAIMS.

FILED DECEMBER 1, 1892.

(15219.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. 484.

THE UNITED STATES, APPELLANT,

vs.

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APPEAL FROM THE COURT OF CLAIMS.

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1 In the Court of Claims.

VAN B. GUNNISON
vs.
THE UNITED STATES. } No. 16737.

I.—*Petition.—Filed March* 25, 1899.

To the honorable the Court of Claims:

The claimant, Van B. Gunnison, respectfully represents:

The claimant has been from the 18th day of June, 1889, and still is a shipping commissioner of the United States at the port of Mobile, in the State of Alabama. From said 18th day of June, 1889, to the 28th day of February, 1890, the claimant, in his official capacity of shipping commissioner as aforesaid, shipped seamen to compose the crews of American vessels to the number of two thousand seven hundred and ninety-four (2,794). The shipments so made by him were in each and every instance at the request of the master or owner of the particular vessel upon which such seamen were shipped. Each of said shipments was an original

2 shipment of seamen, who at the time of their shipment by the claimant had been fully discharged from and paid off by the vessel they may have previously been employed by or acted on as its crew, or a part thereof. For these services the claimant, at the close of each month, presented his account for his official services to the Treasury Department, claiming at the rate of one dollar for each seaman so shipped, as provided in section 2 of the act of Congress entitled "An act to abolish certain fees for official services to American vessels, and to amend the laws relating to shipping commissioners, seamen, and owners of vessels, and for other purposes," approved June 9, 1886, but the Treasury Department improperly disallowed for one thousand and forty-eight (1,048) of said seamen, amounting, at the rate of one dollar each, to one thousand and forty-eight dollars ($1,048). Said one thousand and forty-eight seamen for whom the fees were disallowed were all, except nine, shipped for the coastwise trade of the United States, and as to said nine, they were for the trade between the United States and the West Indies and Mexico.

In addition thereto said Treasury Department also disallowed all fees and compensation in excess of one hundred dollars a month, no matter how much may have been the amount of business performed in such month, and thus disallowed the sum of one hundred and sixty-two dollars and seventy-five cents ($162.75) in his account for December, 1889, two hundred and eleven dollars and seventy-five cents ($211.75) in his account for January, 1890, and one hundred and eighty-four dollars and fifty cents ($184.50) in his account for February, 1890, making a total so disallowed on account of excess of one hundred dollars a month of five hundred and fifty-nine dollars ($559), and a total disallowance in all of one thousand six hundred and seven dollars ($1,607), which amount he claims.

3 No other action than as aforesaid has been had on this claim in Congress or by any of the Departments.

The claimant is the sole owner of this claim and the only person interested therein; and no assignment or transfer of this claim, or of any part thereof or interest therein has been made.

The claimant is justly entitled to the amount herein claimed from the United States, after allowing all just credits and offsets. The claimant is a citizen of the United States and has borne true allegiance to the Government thereof, and the claimant believes the facts as stated in this petition to be true. And the claimant claims one thousand six hundred and seven dollars ($1,607) and costs.

GEORGE A. KING,
Attorney for Claimant.

UNITED STATES OF AMERICA,
Southern District of Alabama at Mobile, ss:

Van B. Gunnison, being duly sworn, deposes and says: I am the claimant in this case. I have read the above petition, and the matters therein stated are true, to the best of my knowledge and belief.

VAN B. GUNNISON.

Sworn and subscribed to before me this 20th day of March, 1890.
[SEAL.] RICHD. JONES,
Clerk U. S. Dist. Court So. Dist. Alabama.

4 II.—*Traverse.*—*Filed May* 3, 1890.

And now comes the Attorney-General on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government, the Attorney-General, in pursuance of the statute in such case provided, denies the said allegations, and asks judgment accordingly.

JOHN B. COTTON,
Assistant Attorney-General.

5 III.—*Findings of fact and conclusion of law.*—*Filed June* 8, 1891.

This case having been heard before the Court of Claims, the court, upon the evidence and after considering the briefs and arguments of counsel on both sides, makes the following

FINDINGS OF FACT.

I.

The claimant was a shipping commissioner at the port of Mobile, Ala.

During the term of his service he made a detailed report monthly to the Secretary of the Treasury of his services and the fees provided by law, with a full, exact, and itemized account of receipts and expenditures:

For the months of December, 1889, and January and February, 1890, his returns were as follows:

	Fees provided by law.
December, 1889, paid salary of clerk, $25	$262.75
January, 1890, paid salary of clerk, $25	311.75
February, 1890, paid salary of clerk, $25	284.50

On each of said accounts the Secretary made and signed the following indorsement:

"Approved in the sum of one hundred dollars $100.\frac{00}{100}$, and respectfully referred to the First Auditor, who will please state an account in favor of the U. S. shipping commissioner for the amount found due, payable from the appropriation for 'salaries, shipping service.'

"The services enumerated within appear to have been necessarily rendered."

The account was stated by the Auditor, admitted and certified by the Comptroller, and paid to claimant in accordance therewith, except that the services of the clerk were wholly omitted from the account.

II.

Previously to that time the Secretary of the Treasury had fixed the compensation of said claimant not to exceed the sum of $100 a month by a letter addressed to him, as follows:

WASHINGTON, D. C., *November* 23, 1889.

U. S. SHIPPING COMMISSIONER, *Mobile, Ala.:*

SIR: From and after the 1st proximo the compensation allowed you under section 1 of the act of June 19, 1886, will not exceed the sum of one hundred dollars ($100.00) in any one month. If the services performed by you in any month do not warrant the payment of one hundred dollars under the existing regulations, your compensation for that month will remain as heretofore fixed. No pay additional to the monthly compensation herein mentioned will be allowed for your services as shipping commissioner.

Respectfully, yours,

C. S. FAIRCHILD,
Secretary.

CONCLUSION OF LAW.

Upon the foregoing findings of fact the court decides that the claimant is entitled to recover the sum of $75.

6 IV.—*Opinion of the court.*

RICHARDSON, *C. J.*, delivered the opinion of the court:

Three questions of law are presented by the claimant's attorney upon the facts proved and found by the court.

First. He insists that the claimant is entitled to be paid by the United States the fees for shipping and discharging crews under the provisions of the second section of the act of 1886, June 19, ch. 421 (24 Stat. L., 80), which are as follows:

"SEC. 2. That shipping commissioners may ship and discharge crews for any vessel engaged in the coastwise trade, or the trade between the United States and the Dominion of Canada, or Newfoundland, or the West Indies, or the Republic of Mexico, at the request of the master or

owner of such vessel, the shipping and discharging fees in such cases to be one-half that prescribed by section forty six hundred and twelve of the Revised Statutes, for the purpose of determining the compensation of shipping commissioners."

Before the passage of the act of 1884 (June 26, ch. 121, substitute for R. S., sec. 4501, 23 Stat. L., 59), shipping commissioners collected and retained for their own services and expenses all fees prescribed by the statutes then in force, up to $5,000 a year, and were required to pay into the Treasury all above that sum. (R. S., §§ 4592, 4593, 4594, and Schedule C, at end of section 4612, page 896, second edition; act of 1874, June 9, ch. 260, 18 Stat. L., 64.)

By that act of 1884, in § 27, Congress provided:

"Shipping commissioners shall monthly render a full, exact, and itemized account of their receipts and expenditures to the Secretary of the Treasury who shall determine their compensation, and shall from time to time determine the number and compensation of the clerks appointed by such commissioner, with the approval of the Secretary of the Treasury, subject to the limitations now fixed by law.

"All fees of shipping commissioners shall be paid into the Treasury of the United States and shall constitute a fund which shall be used under the direction of the Secretary of the Treasury to pay the compensation of said commissioners and their clerks, and such other expenses as he may find necessary to insure the proper administration of their duties."

Thus the law stood at the time of the passage of the act of 1886, June 19, ch. 421, § 1 (24 Stat. L., 79, 80), which provided as follows:

"SEC. 1. That on and after July first, eighteen hundred and eighty-six, no fees shall be charged or collected by collectors or other officers of customs, or by inspectors of steam vessels or shipping commissioners for the following services to vessels of the United States, to wit: * * * Shipping or discharging seamen, as provided by title fifty-three of the Revised Statutes and section two of this act. * * * Collectors or other officers of customs, inspectors of steam vessels, and shipping commissioners who are paid wholly or partly by fees, shall make a detailed report of such services, and the fees provided by law to the Secretary of the Treasury under such regulations as that officer may prescribe; and the Secretary of the Treasury shall allow and pay from any money in the Treasury not otherwise appropriated, said officers such compensation for said services as each would have received prior to the passage of this act;

"Also such compensation to clerks of shipping commissioners as would have been paid them had this act not passed:

"*Provided*, That such services have, in the opinion of the Secretary of the Treasury, been necessarily rendered."

It will be seen that by the act of 1884 commissioners were required to pay all fees into the Treasury, where they were to constitute a fund
7 out of which the commissioners were to be paid their compensation, their expenses for clerks, and other expenses, and they were required to make a detailed report of their receipts and expenditures.

The fees no longer belonged to the commissioners, nor did they furnish the measure of compensation for themselves and their clerks; that was for the Secretary alone to determine.

The act of 1886 abolished the collection of fees altogether. The method of fixing the compensation was not changed, but was reenacted by the words "such compensation for services as each would have received prior to the passage of this act" (that is, under the act of 1884).

The amount allowed for compensation, clerk hire, and expenses was to be paid, not from a fund created by the fees collected, for none were to be collected, but "from any money in the Treasury not otherwise appropriated."

A detailed report of services performed and the fees provided by law, which but for that act would have been collected, was still required, apparently for the sole purpose of furnishing to the Secretary some data of the business done by each commissioner, in order intelligently to determine the amount to be allowed for compensation, clerk hire, and expenses.

It does not appear to have been the purpose of Congress to return to the practice, in whole or in part, of compensating commissioners for their services by fees. Section one of the act of 1886 expressly provides that no fees shall be collected as provided, not only by the Revised Statutes, but also by section two of that act upon which section the claimant's case is founded.

What, then, is the effect of that section? Its purpose is expressly declared in the section itself. The fees allowed by the Revised Statutes for the services mentioned are reduced one-half, "for the purpose of determining the compensation of shipping commissioners." How was that to be determined? By section 1 of the act the compensation was to be the same as it would have been prior to the passage of the act itself, and the law in force prior thereto—that is, the law of 1884—was that the Secretary of the Treasury should "determine their compensation."

Thus we see to what the words of section 2 of the act of 1886 "for the purpose of determining the compensation of shipping commissioners" apply. They refer to the determining of the compensation by the Secretary of the Treasury, and can refer to nothing else.

The only effect of that section is to authorize shipping commissioners to ship and discharge crews of certain vessels and to reduce by one-half the nominal fees prescribed therefor by Revised Statutes, fees which, since the act of 1884, the commissioners have not been allowed to retain for their own use, and since the act of 1886 have not been allowed to collect.

In our opinion the claimant has no cause of action for the fees prescribed by that section.

Second. The claimant contends that the determination of his salary by the Secretary of the Treasury at $100 a month was unreasonable and should be set aside for that cause.

A regulation by the head of a Department may be held invalid by the courts as unreasonable (Campbell v. United States, 107 U. S., 410). But
8 we are not aware that the exercise of a specific power conferred by law upon a public officer to determine the compensation of his subordinates can be held invalid as unreasonable.

The exercise of his judgment and discretion is conclusive, and can not be reviewed, revised, or inquired into by the courts.

Third. The claimant further contends that he is entitled to recover the amount paid by him for the services of a clerk over and above the compensation for his own services.

The Secretary of the Treasury, by his letter of November 29, 1889, set out in Finding II, determined the claimant's compensation not to exceed $100 a month. This letter related only to compensation for services and did not apply to clerk hire and expenses, between which both acts of 1884 and 1886 make a distinction.

In each of the 3 months covered by the case the claimant made his report in detail, specifying the amount of fees prescribed by law (indicating the amount of business done) and the salary paid to a clerk at $25 a month. On each of these returns the Secretary indorsed "the services enumerated within appear to have been necessarily rendered."

We interpret this indorsement as approving the services of the clerk as well as his own. It would be unreasonable to hold that the Secretary intended to pay the commissioner only $100 a month when he had to pay one-quarter of that amount to a clerk, and we think he did not so intend.

These views render it unnecessary to consider many other questions argued at the trial.

Judgment will be entered in favor of the claimant for $75 for amount paid for services of a clerk for 3 months.

9 V.—*Judgment of the court.*

VAN B. GUNNISON
v.
UNITED STATES. } No. 16737.

At a Court of Claims held in the city of Washington on the 8th day of June, 1891, judgment was ordered to be entered as follows:

The court on due consideration of the premises find for the claimant, and do order, adjudge and decree that the said Van B. Gunnison do have and recover of and from the United States the sum of seventy-five dollars.

BY THE COURT.

10 VI.—*Application of defendants for, and allowance of, appeal.*

VAN B. GUNNISON
vs.
THE UNITED STATES. } No. 16737.

From the judgment rendered in the above-entitled cause on June 8, 1890, for $75, in favor of claimant, the defendants, by their Attorney-General, on the 5th day of September, 1891, make application for and give notice of an appeal to the Supreme Court of the United States.

JOHN B. COTTON,
Assistant Attorney-General.

Filed September 7, 1891.

Allowed in open court October 17, 1892.

WILLIAM A. RICHARDSON,
Chief Justice.

11 In the Court of Claims.

VAN B. GUNNISON
vs.
THE UNITED STATES. } No. 16737.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the findings of fact by the court and the conclusion of law thereon, of the opinion of the court, of the judgment of the court, of the application of defendants for and the allowance of an appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Washington, this 30th day of November, 1892.

[SEAL.] JOHN RANDOLPH,
Asst. Clerk Court of Claims.

(Indorsement on cover:) Case No. 15219. Term No. 484. The United States, appellant, vs. Van B. Gunnison. Court of Claims. Filed December 1, 1892.

155-389

Office Supreme Court, U. S.
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JAMES H. McKENNEY,
CLERK

In the Supreme Court of the United States.

OCTOBER TERM, 1894.

THE UNITED STATES, APPELLANT,
v.
VAN B. GUNNISON, APPELLEE. } No. 484.

BRIEF OF APPELLANT.

In the Supreme Court of the United States.

OCTOBER TERM, 1894.

THE UNITED STATES, APPELLANT,
v.
VAN B. GUNNISON, APPELLEE. } No. 484.

BRIEF OF APPELLANT.

I.—STATEMENT OF CASE.

This is an appeal by the United States from a judgment of the Court of Claims awarding appellee the sum of $75 upon the following findings of fact and conclusions of law:

Findings of fact.

I.

The claimant was a shipping commissioner at the port of Mobile, Ala.

During the term of his service he made a detailed report monthly to the Secretary of the Treasury of his services and the fees provided by law, with a full, exact, and itemized account of receipts and expenditures.

For the months of December, 1889, and January and February, 1890, his returns were as follows:

	Fees provided by law.
December, 1889, paid salary of clerk, $25	$262.75
January, 1890, paid salary of clerk, $25	311.75
February, 1890, paid salary of clerk, $25	284.50

On each of said accounts the Secretary made and signed the following indorsement:

"Approved in the sum of one hundred dollars (100\frac{00}{100}$), and respectfully referred to the First Auditor, who will please state an account in favor of the U. S. shipping commissioner for the amount found due, payable from the appropriation for 'Salaries, shipping service.'

"The services enumerated within appear to have been necessarily rendered."

The account was stated by the Auditor, admitted and certified by the Comptroller, and paid to claimant in accordance therewith, except that the services of the clerk were wholly omitted from the account.

II.

Previously to that time the Secretary of the Treasury had fixed the compensation of said claimant not to exceed the sum of $100 a month by a letter addressed to him, as follows:

"WASHINGTON, D. C., *November* 23, 1889.

"U. S. SHIPPING COMMISSIONER, *Mobile, Ala.:*

"SIR: From and after the 1st proximo the compensation allowed you under section 1 of the act of June 19, 1886, will not exceed the sum of one hundred dollars ($100.00) in any one month. If the services performed by you in any month do not warrant the payment of one hundred dollars under the existing regulations, your compensation for that month will remain as heretofore fixed. No pay additional to the

monthly compensation herein mentioned will be allowed for your services as shipping commissioner.

"Respectfully, yours,

"C. S. FAIRCHILD,

"*Secretary.*"

Conclusion of law.

Upon the foregoing findings of fact the court decides that the claimant is entitled to recover the sum of $75.

As appears from the record (pp. 1 and 2) the appellee in this court and the claimant in the court below prosecuted his claim for various fees, which were all adjudicated against him except the item of $75 for the salary of a clerk as described in the first finding of fact of the Court of Claims (pp. 2 and 3), and no appeal having been taken by him, the only question at issue in this court is the allowance of said item of clerk's salary.

On the 23d day of November, 1889, the Secretary of the Treasury officially fixed the maximum monthly compensation of the U. S. shipping commissioner at Mobile at $100 (p. 3). So far as this record shows, nothing was said by either party about the salary of a clerk for said commissioner, nor is it shown that the appointment of any person as such clerk was ever approved by the Secretary of the Treasury. In each of the months of December, 1889, and January and February, 1890, appellee presented his accounts for sums in excess of $100, among the items of which was $25 for clerk's salary.

These accounts were approved by the Secretary only to the extent of $100 per month, the maximum compensation previously fixed, and this sum was paid appellee by the proper official.

II.—ARGUMENT.

This claim is prosecuted under the provisions of the acts of June 26, 1884 (23 Stat., 59, sec. 27), and June 19 1886 (24 Stat., 79, sec. 1).

By the act of 1884 it was provided that—

> Shipping commissioners shall monthly render a full, exact, and itemized account of their receipts and expenditures to the Secretary of the Treasury, who shall determine their compensation, and shall, from time to time, determine the number and compensation of the clerks appointed by such commissioner, with the approval of the Secretary of the Treasury, subject to the limitations now fixed by law.

It was also provided that—

> All fees of shipping commissioners shall be paid into the Treasury of the United States, and shall constitute a fund which shall be used under the direction of the Secretary of the Treasury to pay the compensation of said commissioners and their clerks, and such other expenses as he may find necessary to insure the proper administration of their duties.

By act of June 19, 1886 (24 Stat., 79), it was provided by section 1 that—

> Shipping commissioners who are paid wholly or partly by fees shall make a detailed report of such services and the fees provided by law to the Secretary of the Treasury, under such regulations as that officer may prescribe; and the Secretary of the Treasury shall allow and pay from any money in the Treasury not otherwise appropriated said officers such compensation for said services as each would have received prior to the passage of this act; also such compensation to clerks of shipping commis-

sioners as would have been paid them had this act not passed: *Provided*, That such services have, in the opinion of the Secretary of the Treasury, been necessarily rendered.

These are the only statutes now in force applicable to this question. A comparison of the portions above quoted shows only one change of the earlier act by the later bearing upon this question, viz, that the Secretary shall be of the opinion that the services have been necessarily rendered.

It may be contended that, since the act of 1886 does not specifically prescribe the method of appointing clerks of a commissioner, the approval of the Secretary of the Treasury is no longer necessary, but it seems to us to be more evidently the purpose of the later act to leave the act of 1884 unchanged so far as this question is concerned, the language being, the Secretary shall "allow and pay such compensation to clerks of shipping commissioners as would have been paid them had this act not passed," namely, the salary of only such clerks whose number and compensation had been fixed by the Secretary of the Treasury. If this is the correct view, of course this claim must fail, since the record does not show that the Secretary ever approved the appointment or fixed the compensation of any clerk for this commissioner.

Upon the view of the law taken by the court below, namely, that the certificate of the Secretary of the Treasury to the necessity of the clerks' services is necessary to warrant their payment. The construction of the Secretary's indorsement seems to us an impossible one. By the order or indorsement (Finding I, p. 3, record) the

Secretary in the same order says he "allows the commissioner $100; and that the services have been necessarily rendered." The Secretary certainly referred to the same services in both paragraphs of this order. If the services certified to be necessary were intended by the Secretary to include the services of the clerk, then the compensation of $100 per month allowed by him was intended to include compensation for those same services. The question is, What did *the Secretary* mean? Not, as in case of contract, what might or did another party understand by the words used; and it is utterly inconceivable that the Secretary intended the allowance to be for one thing and the certificate of necessity to apply to another. Any man with such distinction in mind would have expressed it very differently. That the Secretary did not intend that the services certified by him to be necessary included anything other or additional to those for which he allowed the $100 compensation is further rendered certain by his conduct in refusing to pay anything additional. Words and meanings are not to be imparted into an executive order which convict the Secretary of such breach at once of duty and morals.

The statutes show that the regulation of the expense of maintaining shipping commissioners is wholly within the province of the Secretary, and the record shows that the Secretary has determined that this office shall not cost the United States a larger sum than $100 per month.

When a discretion is so vested in an executive officer of the Government the courts may not review his manner of exercising it. In the case of *Dorsheimer* v. *United States*

(7 Wall., 166), the court said that exercise of a discretion intrusted to the Secretary of the Treasury admits of no appeal to the Court of Claims, or to any other court, and in the case of *Currick* v. *Lamar* (116 U. S., p. 423) it was held that in matters which require the exercise of judgment and consideration by an executive officer of the Government, or which are dependent upon his discretion, no rule to control his action will issue. In the case of *The United States* v. *Jones* (7 Peters, p. 384) it was held that so far as the officers of the Treasury act strictly within the rules prescribed for the exercise of their powers, their decisions are in effect final, and to the same effect in the case of *Decatur* v. *Paulding* (14 Peters, p. 515).

It is respectfully submitted that the judgment should be reversed, with instructions to enter judgment for defendant.

JOSHUA ERIC DODGE,
Assistant Attorney-General.
SAMUEL A. PUTMAN,
Assistant Attorney.

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Office Supreme Court, U.S.
FILED
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JAMES H. McKENNEY,
CLERK

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1894.

No. 484.

THE UNITED STATES, Appellant,

vs.

VAN B. GUNNISON.

BRIEF FOR APPELLEE.

GEORGE A. KING,
Attorney for Appellee.

H. L. McQUEEN, PRINTER.

IN THE

Supreme Court of the United States.

October December Term, 1894.

THE UNITED STATES, Appellant,
v.
VAN B. GUNNISON. } No. 484.

BRIEF FOR APPELLEE.

I. Statement of the Case.

The claimant, Van B. Gunnison, filed his petition (pp. 1, 2) in the Court of Claims, March 25, 1890, for the recovery of his fees as Shipping Commissioner at the port of Mobile, Alabama, for his services for the shipment of seamen composing the crews of American vessels sailing from that port, less the sum of one hundred dollars ($100) a month, which had been allowed and paid him by the Treasury Department.

The Court of Claims held, in an elaborate opinion (pp. 3–6) delivered by Chief Justice Richardson, that the amount of the claimant's compensation was within the discretion of the Secretary of the Treasury, and that that having been fixed at one hundred dollars ($100) a month, he could recover no more on that account; but that he was entitled to so much of the fees established by law for

the services as would reimburse him to the amount paid by him for the services of a clerk at the rate of twenty-five dollars ($25) a month, amounting for the three (3) months covered by the claim to seventy-five dollars ($75), for which sum judgment was entered.

The statutes involved are fully set out (p. 4) in the opinion of the court.

II. Brief of Argument.

In order to sustain the judgment rendered by the court below, it can hardly be necessary to do more than call attention to the terms of the statute regulating the compensation of Shipping Commissioners. The acts of 1884 and 1886 are set out in the opinion on page four of the record. We cite them as there set forth, italicising such portions as particularly bear on the question herein involved.

By that of 1884, in sec. 27, Congress provided:

"Shipping commissioners shall monthly render a full, exact, and itemized account of their receipts and expenditures to the Secretary of the Treasury who shall determine their compensation, and shall from time to time determine the *number and compensation of the clerks appointed by such commissioner*, with the approval of the Secretary of the Treasury, subject to the limitations now fixed by law.

"All fees of shipping commissioners shall be paid into the Treasury of the United States and shall constitute a fund which shall be used under the direction of the Secretary of the Treasury *to pay the compensation of* said commissioners *and their clerks*, and such other expenses as he may find necessary to insure the proper administration of their duties."

Thus the law stood at the time of the passage of the act of 1886, June 19, ch. 421, sec. 1 (24 Stat. L. 79, 80), which provided as follows:

"Sec. 1. That on and after July first, eighteen hundred and eighty-six, no fees shall be charged or collected by collectors or other officers of customs, or by inspectors of steam vessels or shipping commissioners for the following services to vessels of the United States, to wit: * * * Shipping or discharging seamen, as provided by title fifty-three of the Revised Statutes, and section two of this act. * * * Collectors or other officers of customs, inspectors of steam vessels, and shipping commissioners who are paid wholly or partly by fees, shall make a detailed report of such services, and the fees provided by law to the Secretary of the Treasury under such regulations as that officer may prescribe; and the Secretary of the Treasury shall allow and pay, from any money in the Treasury not otherwise appropriated, said officers such compensation for said services as each would have received prior to the passage of this act:

"Also *such compensation to clerks of shipping commissioners as would have been paid them had this act not passed:*

"*Provided*, That such services have, in the opinion of the Secretary of the Treasury, been necessarily rendered."

Thus the reimbursement of shipping commissioners for compensation paid to their clerks is expressly provided for. After such clerks have been employed at a compensation expressly approved by the Secretary of the Treasury, it would be in contravention of the statutes to deny them such reimbursement, if the statutory fees are sufficient to cover the amount paid for the clerks' salary.

The question arising in this case was with others involved in that of *United States* v. *Reed*, 61 Fed. Rep. 414, decided by the Circuit Court of Appeals for the Second Circuit April 19, 1894. Judge Lacombe in delivering the opinion of the court thus stated the case:

"Between the 1st day of July, 1886, and the 1st day of March, 1891, the plaintiff incurred various expenses and made various disbursements, amounting in the aggregate to the sum of $4,033.71, for rent of offices and

storage of deceased seamen's effects, cost of said removal of his offices, for stationery, telephone service, for Maritime Register, ice, freight on blanks, safe-deposit vault, telegrams, repairs, etc. The record shows that these were proper, necessary and reasonable expenditures, required to enable the commissioner to comply with the statutes and regulations relating to his official duties. Without them, it would not be practicable for him to discharge those duties, to make his official reports, or to maintain the 'suitable premises' for the transaction of the public business which the law requires. Rev. St. U. S. sec. 4507. That any of the items charged for are unreasonable in amount, or the prices excessive, nowhere appears."

After citing the act of 1884 he proceeds—

"Expenses such as these now under consideration appear to have been audited by the Treasury Department, as a proper charge against the United States, and paid down to July 1, 1886. Where the statute which renders such expenditures a necessary incident to an office does not expressly or by clear implication provide that they shall be paid for by the incumbent of the office out of his compensation, they are, under the authorities, a proper charge against the United States. *Andrews* v. *United States*, 2 Story, 202, Fed. Cas. No. 381; *United States* v. *Flanders*, 112 U. S. 92, 5 Sup. Ct. 67. The statute last quoted expressly provides for their audit, adjustment and payment."

Then citing the act of 1886, which is set forth in the opinion of the court in this case, page 4 of the record, he thus comments upon it, and concludes the opinion—

"The contention that this section repeals the provisions of the act of 1884 (*supra*) as to expenditures by shipping commissioners other than for clerks is wholly without merit. There is nothing in the act last quoted which is susceptible of any such construction. It contains no repealing clause, it does not refer directly or indirectly to such expenditures, nor does it necessarily imply any in-

tention to impose the burden of maintaining suitable premises for the transaction of the public business, which the shipping commissioner is expressly required to procure (section 4507, U. S. Rev. St.), upon him instead of upon the government, which requires it to be maintained, and which had assumed the obligation of maintaining it, and paying the necessary expenses thereof, under the acts of 1872 and 1884.

"There is no weight in the suggestion that, at the time the compensation of the shipping commissioner was fixed under the section above quoted from the act of 1884, 'he was informed that it was to be understood that from such compensation he should pay all his official expenses except for employés and rent.' The law regulating this subject is to be found, not in the 'understanding' of some former secretary of the treasury, nor in the 'information' given to the plaintiff, but in the statute itself, which is too clear and unambiguous to admit of but one construction. The judgment of the circuit court is affirmed.

The claimant in his petition in this case claimed the whole amount of fees and compensation at the rates at which such fees were fixed by law, aggregating one thousand six hundred and seven dollars ($1,607). All of this sum, with the exception of the seventy-five dollars ($75), the amount necessary to re-imburse him the amount paid by him for the salary of the clerk for three months, was disallowed by the Court of Claims. While no specific count was contained in the petition for the recovery of the salary of a clerk, the terms in which the claim was made are broad enough to justify a recovery of that amount upon any ground which would allow of the payment of any portion of these fees. It is not contended that the claimant could under any circumstances be reimbursed for the clerk's salary unless the statutory fees for his services were sufficient to cover it, hence a claim for the fees necessarily covers a claim for anything payable out of those fees. As was said in *Clark* v. *United*

States, 95 U. S. 539, 543, "The forms of pleading in the Court of Claims are not of so strict a character as to preclude the claimant from recovering what is justly due him upon the facts stated in his petition, although due in a different aspect from that in which his demand is conceived."

The claimant is, unfortunately, not in a position to take an appeal in order to test the correctness of the action of the Court of Claims in disallowing the balance of his claim, as his total claim does not reach the amount fixed by the statute as necessary to enable a claimant to appeal. To the extent, however, to which his claim was allowed by the Court of Claims that court was clearly right, and its judgment should be affirmed.

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